



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

November 10, 2003

VIA ELECTRONIC MAIL

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC

Re: Sprint Corporation's Application for Designation as an Eligible
Telecommunications Carrier in the Commonwealth of Pennsylvania; Docket No. 96-45;
INITIAL COMMENTS OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Dear Ms. Dortch:

Enclosed for filing with the Commission are Initial Comments of the Pennsylvania Public Utility Commission in the above-captioned proceeding. Please acknowledge receipt and acceptance of this filing via electronic medium.

If you have any questions concerning this filing, please direct them to me.

Very truly yours,

/S/

Elizabeth H. Barnes
Assistant Counsel

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Application of Sprint Corporation)	CC Docket No. 96-45
For Designation as an Eligible)	
Telecommunications Carrier in the)	
Commonwealth of Pennsylvania)	

**THE PENNSYLVANIA PUBLIC UTILITY COMMISSION’S
INITIAL COMMENTS**

The Pennsylvania Public Utility Commission (PaPUC) hereby respectfully submits these Initial Comments in response to Sprint Corporation’s Application for Designation as an Eligible Telecommunications Carrier (ETC) in the Commonwealth of Pennsylvania (Petition). Sprint Corporation’s Wireless Division¹ (Sprint Wireless) is a commercial mobile radio service provider (CMRS) and via the pending application seeks ETC status to obtain low-income and high-cost support from the federal Universal Service Fund.

First, Pennsylvania has heretofore refrained from exercising jurisdiction over CMRS carriers for purposes of making determinations concerning eligibility for ETC designations under 47 U.S.C. §2214(e) and 47 C.F.R. §§54.201, *et seq.*, see 66 Pa.C.S. §102. We note that Sprint Wireless submits a PaPUC Secretarial Letter (letter dated February 28, 2003 to counsel for NPCR, Inc. d/b/a/ NEXTEL Partners) (NEXTEL letter) in connection with Sprint’s Petition. The NEXTEL letter was submitted by NEXTEL in

its similar petition before this Commission. In reply comments to NEXTEL's petition, the PaPUC noted it has not relinquished jurisdiction which it may maintain in connection with ETC designation. To the extent the NEXTEL letter may be raised by Sprint Wireless as the PaPUC's general position on the question of jurisdiction for ETC designation of CMRS carriers, we comment to clarify that the NEXTEL letter should not be read as such. We append the recent PaPUC Secretarial Letter on this issue (*Attached, A*), to clarify the limited application of the NEXTEL letter. We note that this Commission's guidance on the matter may resolve the open questions presented by ETC designation of CMRS carriers in the Commonwealth.

As a condition to the FCC's ETC designation, Sprint Wireless could be required to offer a showing that the company intends and is able to provide wireless telephone service to everyone throughout the proposed service territory identified in the map it attached to its Application. The proposed service territory covers a wide area, from the western to the eastern portions of the Commonwealth. The FCC should consider the implications of granting an ETC status if it allows Sprint Wireless to offer service to only those customers in the higher densities that pay higher rates, and avoid serving customers in the more rural areas. The FCC could also consider the implications of granting an ETC status if it allows the carrier to selectively market to the most lucrative customers in Verizon's territory. One way to manage this might be to impose a corresponding duty to

¹ Sprint's Wireless Division consists of Sprint Spectrum, L.P., WirelessCo, L.P., SprintCom, Inc., Sprint PCS License, L.L.C., APC PCS, LLC, PhillieCo, L.P., and other wholly-owned and controlled affiliates.

offer its service throughout the service territory it seeks and an affirmative showing of an ability to do so.

Second, the PaPUC is concerned about the loss of revenue to businesses operating in Pennsylvania. This results in less gross receipts taxes to our Department of Revenue, a smaller assessment base for the PaPUC, and thus higher expenses for regulated wireline carriers. Pennsylvania does not currently apply a gross receipts tax to wireless carriers. Although our State legislature is currently considering a gross receipts tax, this is being contested by the wireless carriers on the basis of federal prohibition. 4 U.S.C.A. §§116-126. The FCC should address the issue of the loss of revenue to the States wherein the ETC wireless carriers are unregulated and competing directly for the customers of state-regulated wireline carriers.

We recognize a growing trend in which the unregulated cable and wireless industries are taking customers from the regulated fixed wireline utilities. For example, in June, 2003, *Billing World & OSS Today* published an article entitled “*Cell Phones Calls Beat Out Wireline.*” The article on page 10, cited to a Yankee Group report wherein it found that national subscribers spent more time on their cell phones than their wireline phones in the last quarter of 2002. The report further predicted that the “cord cutting” trend will increase when wireless number portability enables landline numbers to be ported to cell phones.

Pennsylvania is committed to encouraging technological advancement and choice within an ILECs’ territory. However, there should not be an unfair competitive

advantage to the wireless carrier, which does not currently contribute to the Pennsylvania Universal Service Fund, which does not pay access charges, which does not contribute to Telecommunications Relay Service or E911, which does not pay gross receipts taxes to the State within which it offers phone service, which does not pay assessments to help fund the PaPUC, and which might not be required to be a universal provider in order to receive universal service support.

We infer from Sprint Wireless' filing for ETC status that the company intends to substitute its wireless phone service for the wireline phone service in the territories it intends to compete. Once it obtains the high-cost and low-income support, it can go head-to-head with the wireline phone companies and offer the low income programs of Lifeline and Link-Up to the customers of other ETCs. Additionally, it seems unfair that a wireless phone company, which offers its service in bundled packages, all of which include numerous vertical services like voice mail and Caller ID, is not held to the same restrictions on vertical services that Pennsylvania's other companies have regarding the offering of their Lifeline/Link-Up programs. In Pennsylvania, Verizon's customers are restricted to either no vertical services under Lifeline 100 or one vertical service under Verizon's Lifeline 150 program.³ The reasoning is because Lifeline is supposed to offer a discount to basic telephone service to the needy, not a discount for phone service including numerous profitable vertical services.

² Pennsylvania does not currently apply a gross receipts tax to wireless carriers. The FCC should address the issue of the loss of revenues to the States wherein the ETC wireless carriers are unregulated, not required to pay a gross receipts tax, and competing directly for the customers of state-regulated wireline carriers.

Furthermore, the FCC should take this into consideration support-cost differential analysis when making ETC designation decisions. Traditionally, high-cost support in rural areas has been based upon an ILEC's costs. Since it cannot be determined whether the wireless carrier incurs the same costs as an ILEC, the wireless carrier should be required to make a showing of costs incurred for providing service in the same exchange area as a precondition to receiving the universal service support.

The PaPUC notes that federal law expressly preserves state authority over other terms and conditions of services provided by CMRS providers, and states also have the power to petition the FCC for authority to regulate the rates for CMRS where market conditions fail to protect subscribers adequately from unjust and unreasonable rates. The FCC permits state assessments on wireless carriers for universal service purposes regardless of whether that state regulates wireless carriers. 47 U.S.C.S. §332(c)(3). Also, states retain the authority to protect the public safety and welfare, and safeguard the rights of consumers. However, in states such as Pennsylvania where utility regulators have refrained from exercising jurisdiction over CMRS providers, the FCC must assure that the ETC designation is not simply an attempt to secure federal monies without assurances that the monies be used for their intended purposes in high-cost and low-income areas, and that the company be able and willing to offer toll-limiting and Lifeline/Link-Up services to those customers that could benefit from it in the entire

³ Lifeline 150 is available to those residential customers who have household incomes less than or equal to 150% of the federal poverty guidelines, and are receiving social assistance.

service territory. The carrier could be expected to provide service to all customers throughout its designated ETC territory.

Respectfully submitted,

Pennsylvania Public Utility Commission

/S/

Elizabeth H. Barnes
Assistant Counsel

Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
(717) 772-5408

Dated: November 10, 2003

APPENDIX A



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

November 10, 2003

{Addressee}

{Address}

Attn: {Contact Person}

RE: *Commission jurisdiction to designate wireless carriers as eligible
telecommunications carriers (ETCs) pursuant to Section 214(e) of TA -96*

To All Telecommunications Carriers and Interested Parties:

This is to advise that the Commission has not relinquished any part of its jurisdiction pursuant to 47 U.S.C. §2214(e) and 47 C.F.R. §§54.201, *et seq.*, to designate “eligible telecommunications carriers” (ETCs). To date, this Commission has not ruled in a contested proceeding on whether this jurisdiction may extend to a wireless carrier, notwithstanding the provision of 66 Pa.C.S. §102 (excluding providers of mobile domestic cellular radio telecommunications service from the definition of “public utility” in Pennsylvania’s Public Utility Code).

The question of designation of wireless carriers as ETCs appears to raise a legitimate question of Commission jurisdiction under §214 (e) of TA-96. A prior Secretarial Letter issued February 28, 2003 to NEXTEL Partners, Inc., stating that the Commission does not exercise jurisdiction of wireless carriers for ETC purposes, should not be construed as a Commission order of general application on the question. This is not to imply the Commission intends to exercise jurisdiction to designate wireless carriers as ETCs, rather, this letter only intends to clarify that the question may be considered.

This Commission has noted the difficult question presented by ETC designation of wireless carriers at the state level in comments before the Federal Communications Commission. We also noted that we welcome guidance on the question, though we reserve our authority to decide the issue. Any inquiries on this matter may be addressed to Elizabeth A. Lion Januzzi, Assistant Counsel, at (717) 772-0696.

Respectfully yours,

James J. McNulty
Secretary

cc: Elizabeth Lion Januzzi, Assistant Counsel, Law Bureau